

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6659 OF 2016**

Bhagwat Shivram Pawar	}	Petitioner
versus		
State of Maharashtra	}	
and Ors.	}	Respondents

Mr. R. K. Mendadkar for the petitioner.

Mr. C. P. Yadav - AGP for respondent nos. 1 to 4.

Mr. Ashwinkumar R. Kapadnis for respondent no. 5.

Mr. Dayanand P. Jagtap - Joint Commissioner, Tribal Department, Nashik and I/c. As Joint Commissioner, Nandurbar with Mr. Eknath G. Bhalerao - the then Vice Chairman and Joint Commisiioner of Nandurbar Scheduled Tribe Committee and Mr. Dinkar Pawara - Member Secretary, Nandurbar Scheduled Tribe Committee present.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.
DATED :- FEBRUARY 1, 2017**

P.C. :-

1. The committee, whose order is impugned in this writ petition, has invalidated the petitioner's caste certificate dated 14th August, 1998.

2. The petitioner claims to be belonging to Hindu Thakur. The petitioner, during the course of the scrutiny of his claim, relied upon certain judicial orders. The petitioner pointed out,

during his appearance on 4th June, 2005 before the committee that there is a caste validity certificate issued to Kalyani Bhagwat Pawar dated 18th May, 2005. There is a caste validity certificate of his niece from the paternal side, namely, Sunanda Baburao Pawar and there is a caste validity certificate of his cousin grandson also from the paternal side, namely, Ajinkya Suryakant Pawar. Relying upon these documents, which are a vital piece of evidence and undisputedly cannot be discarded unless there is established and proven fraud or misrepresentation, the committee, still proceeded on the footing that it is obliged to verify and scrutinise the claim in details. That is also by invoking the principles and test of affinity and the area restriction or the verification with regard to the area where this Hindu Thakur tribe is predominantly found. Despite the production of these documents and the contents of which were undisputed, this detailed scrutiny resulted in invalidation of the caste claim.

3. The committee, during the course of arguments has not only referred to the common surnames, but the rituals, religious practices, festivals and other details. The petitioner and others, who claim to be belonging to Thakur Tribe ordinarily worship Hindu gods and goddesses. Therefore, their

religious practices do not match with that of the tribe. We have found from a reading of the impugned order that the committee discards this documentary evidence in favour of the petitioner on the specious plea that when these certificates were issued, the law prevailing was different. There was no proper and thorough inquiry. No where there is a finding that the claim was granted fraudulently or that there was misrepresentation and by the family members or those other members of the community to whom caste validity certificates have been issued in large number. In these circumstances, even the learned AGP found it difficult to support this order.

4. We inquired from him as to why the committee cannot correct itself and now issue the caste validity certificate. It could have made a statement before this court and possibly the matter could have rested there. However, the committee thinks that the order was passed by members who are now no longer working and functioning as the committee members. There are others, who were responsible for passing of the impugned order. However, it is clarified that two members of the committee, who are present in court today, are party to the order passed and impugned in this writ petition. They

somehow feel that they must stand by their conclusion, else, parties like the petitioner would always insist that such orders, which once passed cannot be withdrawn, should be taken back or withdrawn by the committee on its own. The committee becomes *functus officio* and cannot recall its orders is the practical difficulty in such matters. We do not think that such a situation occurs in the present case. In the present case, when the committee members are questioned about their approach and whether that is sustainable in law, it would be evident that in the light of this court's observations during the course of the arguments, the committee could have requested for time so as to correct itself. That does not appear to be the situation in such matters. We feel that the necessary humility and generosity is lacking. The committee feels that it has been set up to make detailed scrutiny and verification of claims and must proceed on the footing that a claimant has to prove and establish his case thoroughly and fully. The committee can go on questioning him and at times posing embarrassing questions. It is this approach which disturbs us. We do not see how any committee member is justified in perpetuating and continuing such an approach and that too before the highest court of the State. We condone

this approach and stand of the committee members only in the present case. We must remind them that this court possesses powers of judicial review, when it is approached by the aggrieved citizens. When they invoke jurisdiction under Article 226 of the Constitution of India and prove and establish their right and also request this court to issue a writ of certiorari, then, dependent upon the facts and circumstances of the case, including the conduct of the parties, this court issues a prerogative writ for quashing and setting aside the order impugned before it. That is because it corrects errors of jurisdiction. It is precisely that power which this court exercises. If the committee members, who claim to be trained in deciding matters and passing quasi judicial orders lack in the necessary maturity and judicial approach, then, it is for others to look into and equally take steps to train them. If they still persist and continue to commit such mistakes, then, the immediate thing that must be done is either to remind and if they do not correct themselves, to remove.

5. In the facts and circumstances of the present case, by reminding the committee members that hereafter we would not hesitate to deprive them of their office, we direct them to issue the necessary certificate of validity to the petitioner,

based on the earlier cast validity certificates issued to the above family members and within a period of one week from today.

6. The writ petition is allowed in these terms.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)